



**Itel Rail Corporation**

55 Francisco Street  
San Francisco, CA 94133  
(415) 984-4000  
(415) 781-1035 Fax

RECORDATION NO. 8852 FILED 1425

DEC 21 1989 -2 05 PM

December 20, 1989 INTERSTATE COMMERCE COMMISSION

9-355A052

Hon. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, DC 20423

**Re: Assignment and Assumption Agreement**

Dear Ms. McGee:

On behalf of Itel Rail Corporation, the above instrument, in four (4) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$75 recordation fee.

Please record this Assignment under the Trust Agreement (the "Trust Agreement") dated as of May 15, 1977, between Itel Rail Corporation, as assignee of BA Leasing & Capital Corporation, predecessor to Pacific Systems, Inc., and First Security State Bank, as Owner-Trustee, which was filed with the ICC on June 10, 1977, under Recordation No. 8852. ✓

The parties to the aforementioned instrument are listed below:

BA Leasing & Capital Corporation (Assignor)  
c/o BankAmerilease Companies  
Two Embarcadero Center  
San Francisco, California 94111

Itel Rail Corporation (Assignee)  
55 Francisco Street  
San Francisco, California 94133

This Assignment assigns to Assignee all right, title and interest of Assignor in and to the Trust Agreement as it relates to two hundred thirty two (232) boxcars.

Hon. Noreta R. McGee  
December 20, 1989  
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Please cross-index this Assignment to the following four (4) Lease Agreements:

- 1) Lease Agreement dated as of January 25, 1977, between Itel Rail Corporation and Apalachicola Northern Railroad Company, which was filed with the ICC on April 27, 1977, under Recordation No. 8796.

The parties to the aforementioned instrument are as follows:

Itel Rail Corporation (Lessor)  
55 Francisco Street  
San Francisco, California 94133

Apalachicola Northern Railroad Company (Lessee)  
300 First Street  
Port St. Joe, Florida 94133

This Assignment covers seventeen (17) boxcars described on Schedule 1 thereto included under the Trust Agreement.

- 2) Lease Agreement dated as of April 20, 1983, between Itel Rail Corporation and McCloud River Railroad, which was filed with the ICC on May 27, 1983, under Recordation No. 14029.

The parties to the aforementioned instrument are as follows:

Itel Rail Corporation (Lessor)  
55 Francisco Street  
San Francisco, California 94133

McCloud River Railroad Company (Lessee)  
P. O. Box 1500  
McCloud, California 96057

This Assignment covers forty-four (44) boxcars described on Schedule 1 thereto included under the Trust Agreement.

- 3) Lease Agreement dated as of June 1, 1977, between Itel Rail Corporation and Meridian and Bigbee Railroad Company, which was filed with the ICC on November 10, 1977, under Recordation No. 9702.

The parties to the aforementioned instrument are as follows:

Itel Rail Corporation (Lessor)  
55 Francisco Street  
San Francisco, California 94133

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Meridian and Bigbee Railroad Company (Lessee)  
P. O. Box 551  
Meridian, Mississippi 39301

This Assignment covers seventy-one (71) boxcars described on Schedule 1 thereto included in the Trust Agreement.

- 4) Lease Agreement dated as of December 30, 1987, between ITEL Rail Corporation and Union Pacific Railroad Company, which was filed with the ICC on January 22, 1988, under Recordation No. 15480.

The parties to the aforementioned instrument are as follows:

ITEL Rail Corporation (Lessor)  
55 Francisco Street  
San Francisco, California 94133

Union Pacific Railroad (Lessee)  
1416 Dodge Street  
Omaha, Nebraska 68179

This Assignment covers one hundred (100) boxcars described on Schedule 1 thereto included in the Trust Agreement.

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,



Patricia Schumacker  
Legal Department

PS:  
Enclosures

cc: Charles Kappler, Esq.

**Interstate Commerce Commission**  
Washington, D.C. 20423

1/3/90

OFFICE OF THE SECRETARY

Patricia Schumacker  
Itel Rail Corporation  
55 Francisco St.  
San Francisco, Calif. 94133

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/21/89 at 2:05pm and assigned recordation number(s). 8852-J

Sincerely yours,



Noreta R. McGee  
Secretary

Enclosure(s)



RECORDATION NO. 15480  
879614029 9702  
DEC 21 1989 -2 05 PM  
INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 8852  
DEC 21 1989 -2 05 PM  
INTERSTATE COMMERCE COMMISSION

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Agreement") between **BA Leasing & Capital Corporation**, a California corporation ("Assignor"), and **Itel Rail Corporation**, a Delaware corporation ("Assignee"), dated as of November 29, 1989.

**WHEREAS**, Assignor's predecessor, Pacific Systems, Inc. ("Pacific") has created a trust pursuant to a Trust Agreement (the "Trust Agreement") dated as of May 15, 1977, between Assignor and First Security State Bank, not in its individual capacity but solely as Owner-Trustee ("Owner-Trustee"); and Pacific transferred to such trust 250 boxcars, certain of such boxcars have been destroyed, and Assignor beneficially owns the remaining 232 boxcars, which are identified on Schedule 1 hereto (the "Cars") and, pursuant to the Trust Agreement, Owner-Trustee holds legal title to the Cars and the Cars constitute part of the Trust Estate (as defined in the Trust Agreement); and

**WHEREAS**, Owner-Trustee, on behalf of the trust, is a party to an Equipment Trust Agreement, 1977 Series 3, dated as of May 15, 1977, as amended (the "Equipment Trust") with First Security Bank of Utah, National Association, not in its individual capacity but solely as Trustee ("Trustee"), pursuant to which Trustee has issued equipment trust certificates (the "ETC Debt") to certain ETC holders (the "Holders"), and which Equipment Trust was filed with the Interstate Commerce Commission on June 10, 1977 and given Recordation Number 8852-A; and

**WHEREAS**, Assignee, as successor to SSI Rail Corp., Assignor, as successor to Pacific, Itel Corporation, Owner-Trustee and the Holders are parties to a Participation Agreement dated as of May 15, 1977, as amended (the "Participation Agreement"); and

**WHEREAS**, Owner-Trustee has leased the Cars to Assignee pursuant to a Lease of Railroad Equipment (No. 2) dated as of May 15, 1977, as amended (the "Lease") between Assignee, as successor to SSI Rail Corp., and Owner-Trustee, which Lease was filed with the Interstate Commerce Commission and given Recordation Number 8852-B; and

**WHEREAS**, in order to secure the payment of the ETC Debt, the Lease has been assigned for security purposes to Trustee pursuant to an Assignment of Lease and Agreement dated as of May 15, 1977 (the "Lease Assignment"); and

**WHEREAS**, Assignee has leased the Cars to Appalachicola Northern Railroad Company, McCloud River Railroad Company, Meridian and Bigbee Railroad Company and Union Pacific Railroad pursuant to a leases dated as of January 25, 1977; April 20, 1983; June 1, 1977; and December 30, 1987, respectively, as amended (the "Subleases"), and Assignee has assigned the Subleases to Owner-Trustee for security purposes pursuant to a Sublease Assignment (the "Sublease Assignment") to secure the performance of Assignee's obligations under the Lease; and

**WHEREAS**, Owner-Trustee has assigned its rights in the Subleases to Trustee for security purposes pursuant to a Reassignment of Sublease (the "Sublease Reassignment") to secure performance of Owner-Trustee's obligations under the Equipment Trust; and

**WHEREAS**, Assignee, as successor to SSI Rail Corp., and Assignor, as successor to Pacific, are parties to an indemnity agreement (the "Indemnity Agreement") dated as of May 15, 1977, pursuant to which Assignee has agreed to indemnify Assignor in connection with certain income taxes as provided therein; and

**WHEREAS**, Assignee and Trustee are parties to a New Covenant Agreement dated as of September 19, 1983, as amended (as amended, the "New Covenant Agreement") pursuant to which the covenants of Assignee under the Participation Agreement and under certain other agreements were amended and restated in their entirety; and

**WHEREAS**, Assignor and Assignee are parties to a Purchase and Sale Agreement (the "Purchase Agreement") dated as of the date hereof, pursuant to which Assignor has agreed to assign to Assignee, and Assignee has agreed to accept the assignment of and assume, all of Assignor's right, title and interest in the Participation Agreement and the Trust Agreement, and Assignor's beneficial interest in the Trust Estate, the Cars, the Lease, the Equipment Trust, the Lease Assignment, the Sublease Assignment, the Sublease Reassignment and any other agreements entered into by Assignor or in which Assignor has an interest in connection with its beneficial interest in the Cars and in connection with the transactions described above and all documents, agreements, certificates and opinions delivered pursuant to the above-mentioned agreements, and all amendments thereof and supplements thereto, except the Reserved Rights (as defined in Section 1 of this Agreement) (all documents, instruments and agreements listed or described in this paragraph, except the Indemnity Agreement, collectively, the "Acquisition Documents"); and

**WHEREAS**, Section 6.01 of the Trust Agreement provides that Assignor may assign its interest in the Trust Agreement to any corporation having a combined capital and surplus of at least \$50,000,000, and Assignee has a combined capital and surplus in excess of \$50,000,000.

NOW, THEREFORE, Assignee and Assignor hereby agree as follows:

1. Assignment

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby assigns to Assignee, effective on the date hereof, all of Assignor's right, title and interest (except the Reserved Rights, as defined below) in, to and under each of the Acquisition Documents (including without limitation Assignor's beneficial interest in the Cars and the Trust Estate). The right, title and interest of Assignor in, to and under all of the foregoing (including Assignor's beneficial interest in the Cars), except the Reserved Rights, shall be known as the "Assignor's Interest." "Reserved Rights" shall mean such rights of Assignor under the Acquisition Documents as have accrued prior to the date hereof, all right, title and interest of Assignor in, to and under the Indemnity Agreement and the rights of Assignor to be indemnified by Assignee, as Lessee, under Sections 6 and 9 of the Lease; provided, however, that, for purposes of all such rights, the Closing shall be treated as an expiration of the Lease, and Assignor's rights to be indemnified shall exist, as to income tax matters, only with respect to tax years of the Assignor ending before January 1, 1990, and as to all matters, only as to claims made with respect to events and occurrences arising before the date hereof.

Assignee accepts the foregoing assignment. Assignor confirms that any obligations and liabilities of Assignor to be performed or accruing under the Acquisition Documents (other than the obligation to pay unpaid principal and accrued interest on the ETC Debt, which obligation Assignee is assuming) prior to the date hereof, shall remain the obligations and liabilities of Assignor.

2. Assumption

Assignee hereby assumes and agrees to perform, from and after the date hereof, all of Assignor's obligations contained in, accruing under or arising with respect to the Acquisition Documents. Subject to Section 1, Assignee hereby confirms that it shall be deemed a party to each Acquisition Document to which Assignor is a party or by which it is bound and shall be bound by all the terms thereof (including the agreements and obligations of Assignor set forth therein) as if therein named as Owner. As between Assignor and Assignee, Assignor is hereby released from its obligations under the Acquisition Documents to the extent expressly assumed by Assignee pursuant to this Section 2.

### **3. Further Assurances**

Assignor shall, at the request of Assignee, do, execute, acknowledge or deliver or cause to be done, executed, acknowledged or delivered all such further acts, deeds, assignments, conveyances or assurances as may be reasonably requested by Assignee for the better transferring, assigning, conveying, granting, assuring, vesting and confirming to Assignee of the interests of Assignor intended to be conveyed in this Agreement. Assignee agrees to file this Agreement with the ICC at its expense.

### **4. Miscellaneous**

This Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws doctrine, but the parties shall be entitled to all rights under 49 U.S.C. Section 11303. Jurisdiction and venue of any lawsuit with respect to this Agreement may be had in any court located in the City and County of San Francisco, California. This Agreement can be modified or rescinded only by a writing signed by Assignee and Assignor. This Agreement may be executed in two or more counterparts, and such counterparts taken together shall constitute one and the same instrument.

### **5. Notice**

Any notices required or permitted hereunder shall be in writing, addressed to the other party as set forth below and shall be valid when delivered personally or by overnight courier or by telex or telefax or three days after having been dispatched by United States mail, first class, postage prepaid, as follows:

If to Assignee:        Itel Rail Corporation  
                             55 Francisco Street  
                             San Francisco, California 94133  
                             Attn: Robert C. Kiehnle,  
   Vice President and Treasurer

If to Assignor:        BA Leasing & Capital Corporation  
                             c/o BankAmeriLease Companies  
                             Two Embarcadero Center  
                             San Francisco, CA 94111  
                             Attn: Wayne P. Weiner,  
   Vice President

Either party may, by written notice to the other, change the address to which notices are to be sent.



IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written.

**BA LEASING & CAPITAL CORPORATION**

By: Wayne P. Warner  
Title: Vice President

By: Brenda Huser Crady  
Title: Vice President

**ITEL RAIL CORPORATION**

By: \_\_\_\_\_  
Robert C. Kiehnle  
Title: Vice President and Treasurer

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written.

**BA LEASING & CAPITAL CORPORATION**

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

**ITEL RAIL CORPORATION**

By: Robert C. Kiehnle

Robert C. Kiehnle

Title: Vice President and Treasurer

SCHEDULE 1

IDENTIFICATION OF CARS

	<u>Reporting Mark</u>	<u>Description</u>
		50'6", XM (general purpose) 70-Ton boxcars with sliding doors and end-of-car cushioning
AN	5002 5018 5020 5030 5069 5086 5095 5104-5105 5114 5130 5138 5169 5189 5192-5193 5199	
		<u>17 Cars</u>
CHTT	100164-100263	
		<u>100 Cars</u>
MB	4151-4174 4176-4181 4183-4186 4263-4299	
		<u>71 Cars</u>
MR	7177-7186 8700-8702 8704-8705 8708-8709 8711 8713 8715-8720 8724-8727 8729-8731 8733-8737 8739 8742-8744 8747-8749	
		<u>44 Cars</u>
	TOTAL	<u>232 Cars</u>

STATE OF CALIFORNIA       )  
                                  ) ss.  
COUNTY OF SAN FRANCISCO )

On this \_\_\_\_ day of \_\_\_\_\_, 1989, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn says that he is \_\_\_\_\_ of **BA Leasing & Capital Corporation**, that the foregoing **Assignment and Assumption Agreement** was signed on behalf of said corporation by the authority of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

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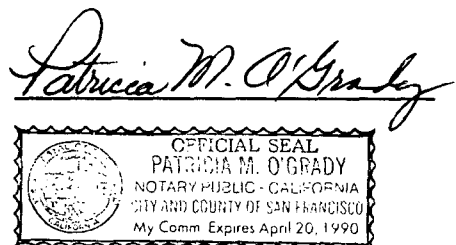
STATE OF CALIFORNIA       )  
                                  ) ss.  
COUNTY OF SAN FRANCISCO )

On this \_\_\_\_ day of \_\_\_\_\_, 1989, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn says that he is \_\_\_\_\_ of **BA Leasing & Capital Corporation**, that the foregoing **Assignment and Assumption Agreement** was signed on behalf of said corporation by the authority of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

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STATE OF CALIFORNIA       )  
                                  ) ss.  
COUNTY OF SAN FRANCISCO )

On this 28th day of November, 1989, before me personally appeared Robert C. Kiehnle, to me personally known, who being by me duly sworn says that he is Vice President and Treasurer of **Itel Rail Corporation**, that the foregoing **Assignment and Assumption Agreement** was signed on behalf of said corporation by the authority of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



STATE OF CALIFORNIA       )  
                                  ) ss.  
COUNTY OF SAN FRANCISCO)

On this 27th day of November, 1989 before me personally appeared Wayne Weiner and Brenda Swiercinsky, to me personally known, who being by me duly sworn says that they are Vice Presidents of **BA Leasing & Capital Corporation**, that the foregoing **Assignment and Assumption Agreement** was signed on behalf of said corporation by the authority of its board of directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Yvette Montalvo*

